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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,813	04/20/2004	Rolf Bruck	E-80502	7276
24131	7590	09/12/2005	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			PHAM, MINH CHAU THI	
			ART UNIT	PAPER NUMBER
			1724	
DATE MAILED: 09/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

7.3

<b>Office Action Summary</b>	<b>Application No.</b> 10/828,813	<b>Applicant(s)</b> BRUCK ET AL.	
	<b>Examiner</b> Minh-Chau T. Pham	<b>Art Unit</b> 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the European Patent (EP 0134002A1), in view of Dias et al (5,474,587).

The European reference discloses a heat resistant filter layer for a diesel exhaust filter comprising a material (3) being at least partially pervious to a fluid (see Abstract), at least one filter section (111) of heat and corrosion resistant material metal (see Abstract), and the layers being stacked to form a gas-permeable packet wherein the layers are connected to one another by brazing or welding in at least one connecting section (see 19 in Fig. 9). Claims 1-24 differ from the disclosure of the European reference in that the boundary region having a first layer thickness being different than a second layer thickness of the filter section. Dias et al disclose a diesel-soot filtering element (col. 1, lines 15-17) having a porous fluid permeable body (line 1 of Abstract, col. 3, lines 13-15), a filter sections, a boundary region extending from the filter section wherein the boundary region has a first layer thickness (o38 in Fig. 1) is different from the second layer thickness (o46 in Fig. 1), and the thickness has a variety of dimensions (see o38, o46 and o56 in Fig. 1, col. 3, lines 22-25). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a filter with the boundary region in different thickness as taught by Dias et al in the apparatus of the European reference to provide a seal accommodating space so as to

prevent fracturing of the filter material while allowing sufficient expansion of the filter housing with heat.

As to the numerical thickness requirements, i. e. "at most 3mm" of claim 4 and so on, the specification contains no disclosure of either the critical nature of these requirements or any unexpected results arising therefrom, and as such these requirements would be arbitrary and therefore obvious. Applicants **must** show that these requirements are critical. *In re Woodruff, 16 USPQ 2d 1934.*

### ***Response to Arguments***

Applicant's arguments filed on June 28, 2005 have been fully considered but they are not persuasive.

Applicant argues that the secondary reference Smith "fails to disclose that the boundary region has a first layer thickness being different than a second layer thickness of the filter section". The Examiner now drops the Smith reference and newly introduces the Dias et al as the secondary reference in combination with the primary European reference under 103 rejections to show a diesel-soot filtering element (col. 1, lines 15-17) having a porous fluid permeable body (line 1 of Abstract, col. 3, lines 13-15), a filter sections, a boundary region extending from the filter section wherein the boundary region has a first layer thickness (o38 in Fig. 1) is different from the second layer thickness (o46 in Fig. 1), and the thickness has a variety of dimensions (see o38, o46 and o56 in Fig. 1, col. 3, lines 22-25), as claimed. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a filter with the boundary region in different thickness as taught by Dias et al in the

apparatus of the European reference to provide a seal accommodating space so as to prevent fracturing of the filter material while allowing sufficient expansion of the filter housing with heat.

Applicant's arguments with respect to claims 1-24 have been thoroughly considered but are moot in view of the new ground(s) of rejection, as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Minh-Chau Pham**  
**Patent Examiner**  
**Art Unit: 1724**

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**September 8, 2005**